

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ALDERBROOK DEVELOPMENT, INC.,

Appellant,

Y.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCRB No. 81-27

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the assessment of a \$350 civil penalty for the alleged violation of conditions of an NPDES permit, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, Gayle Rothrock, and David Akana (presiding), at a formal hearing in Lacey, Washington, on July 20, 1981.

Appellant was represented by its president, Wesley M. Johnson; respondent was represented by Charles K. Douthwaite, Assistant Attorney General. Olympia Court Reporter Kim Otis recorded the proceedings.

1 Having heard the testimony, having examined the exhibits, and
2 having considered the contentions of the parties, the Board makes
3 these

4 FINDINGS OF FACT

5 I

6 Appellant is the owner and operator of a resort facility in Union,
7 Washington. A new hotel was opened at the site on September 1, 1978.
8 The development plan included a sewage treatment system. Appellant
9 possessed NPDES Permit No. WA-003775-3 issued by respondent which
10 allowed it to discharge certain effluent from its treatment system
11 into Hood Canal, waters of the state.

12 II

13 The treatment plant cost appellant about \$150,000. Appellant
14 believed that its arrangement with the manufacturer of the plant and
15 its consulting engineers left it with no personal obligation.
16 Appellant was not instructed to understand the operation of the plant
17 or its obligations under the permit issued to it for the operation of
18 the plant.

19 III

20 Appellant experienced start-up problems with the treatment plant
21 from the beginning of its operation and for some time thereafter.
22 During this period, appellant sought to remedy the problem by pressing
23 its consultants, manufacturers and waste treatment plant operator for
24 a solution. Appellant exercised its best efforts to bring its
25 treatment plant into compliance by seeking persons with apparent

1 expertise in the subject matter. For whatever reason, the plant's
2 operation did not improve.

3 IV

4 On or about April 1979, respondent became aware of the operational
5 and other difficulties experienced at appellant's facility. Because
6 effluent monitoring was not being accomplished as it believed required
7 by permit conditions, respondent's employee took samples of
8 appellant's effluent at various points in the treatment plant on
9 July 31 and September 12, 1979. When it appeared that no positive
10 result would be forthcoming from appellant's efforts, respondent took
11 enforcement action. A part of such action was the assessment of a
12 \$5,000 civil penalty for the alleged discharge of improperly treated
13 waste into Hood Canal, in violation of permit conditions relating to
14 final effluent limitations, compliance schedule, operation and
15 maintenance, and several general conditions. Appellant sought
16 mitigation of the penalty from respondent. Further proceedings were
17 held in abeyance to afford appellant time to find a solution.
18 Appellant found a knowledgeable consultant and is apparently nearer to
19 full compliance than ever before. With completion of further
20 short-term and long-term steps, appellant's plant should stay within
21 permit requirements.

22 Respondent reviewed appellant's record and efforts after November
23 1979, and through September 1980. Fourteen alleged violations were
24 ascertained during the period. A nominal sum was assigned for each
25 alleged violation. The total amount calculated, \$350, supplanted the

1 original \$5,000 penalty. Appellant appeals from the assessment of the
2 \$350 civil penalty asserting that its efforts and monies expended
3 justify removal of the penalty. Appellant does not dispute the
4 occurrence of the alleged violations.

5 V

6 Between the period beginning in April 1979 and ending on November
7 1, 1979, appellant did not submit the monitoring reports required by
8 the terms of its permit.

9 The samples taken and analyzed by respondent on July 31 and
10 September 12, 1979, show that appellant's discharges on the day taken
11 exceeded the monthly and weekly average limitations of its permit with
12 respect to total suspended solids on both days and biochemical oxygen
13 demand (5 day) on September 12.

14 VI

15 Any Conclusion of Law which should be deemed a Finding of Fact is
16 hereby adopted as such.

17 From these Findings, the Board comes to these

18 CONCLUSIONS OF LAW

19 I

20 Appellant violated the terms and conditions of its NPDES permit on
21 July 31 and September 12, 1979. Appellant also did not comply with
22 monitoring requirements of its permit.

23 II

24 RCW 90.48.144 provides for a penalty of up to \$5,000 per day for
25 the violation of the terms and conditions of a waste discharge permit.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 The \$350 penalty was properly assessed and is reasonable in
2 amount. Appellant's good faith is not denied. However, we cannot say
3 that the enforcement action taken by the department was
4 inappropriate. The violations occurred as alleged, and continued to
5 occur over a long period of time thereafter. Appellant's good faith
6 and reliance on others does not excuse the violations for which it is
7 ultimately responsible. After reviewing appellant's progress,
8 respondent substantially reduced the penalty. After reviewing the
9 circumstances of the case, we cannot find a basis upon which to
10 further reduce the penalty. Accordingly, the \$350 penalty should be
11 affirmed.

12 III

13 Any Finding of Fact which should be deemed a Conclusion of Law is
14 hereby adopted as such.
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1 From these Conclusions, the Board enters this

2 ORDER

3 The \$350 penalty is affirmed.

4 DATED this 5th day of August, 1981.

5 POLLUTION CONTROL HEARINGS BOARD

6
7 Nat W. Washington
8 NAT W. WASHINGTON, Chairman

9 David Akana
10 DAVID AKANA, Member

11
12 Gayle Rothrock
13 GAYLE ROTHROCK, Member